

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

**Criminal Miscilionious Application No. S-83 of 2026.
(Shah Dost v. The State & others).**

Date	Orders with signature of Judge
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1. For orders on M.A No.4131/26 (U/A).
2. For orders on office objections 'A'.
3. For hearing of main case.
4. For hearing of M.A No.1289/26 (S/A).

28-09-2026.

Mr. Habibullah G. Ghouri, Advocate for applicant.

M/s Saeed Ahmed B. Bijarani and Karim Yar Bohio,
Advocates for Respondent No.2.

Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General
along with Inspector Saleem Lashari of PS B-Section
Kandhkot.

Ali Haider 'Ada' J.- The applicant, being an accused, has assailed the order dated 12.03.2026, passed by the learned Judicial Magistrate, Kashmore at Kandhkot, whereby the learned Magistrate did not agree with the findings of the police/Investigating Officer, who had recommended disposal of the case under 'C' Class.

2. Briefly, FIR No.126/2025 was lodged by SHO Abdul Qadir Bangwar at Police Station B-Section, Kandhkot, on 21.09.2025, with the main allegation that, while the complainant party had proceeded to a pointed place in order to trace out the accused nominated in FIR No.125/2025, the accused persons resorted to straight firing, as a result whereof one of the accused, namely Shafiq Dahani, died. The deceased Shafiq was the brother-in-law of the present applicant. Subsequently, Asghar/respondent No.2 filed an application under Sections 22-A and 22-B, Cr.P.C. before the learned Ex-Officio Justice of Peace, Kashmore at Kandhkot, against the present applicant and others, alleging their involvement in the murder of deceased Shafiq.

3. The learned Justice of Peace, vide order dated 30.09.2025, directed that the version of respondent No.2 be recorded in terms of the principles laid down in *Sughra Bibi v. The State*, PLD 2018 SC 595. Pursuant thereto, the police recorded his version and, after conducting investigation, concluded that the allegations levelled by Asghar/respondent No.2 were not substantiated and submitted a report recommending disposal of the matter under 'C' Class. The learned Magistrate, however, did not agree with the opinion of the Investigating Officer and passed the impugned order, which has been assailed through the instant application.

3. Learned counsel for the applicant submitted that deceased Shafiq had contracted marriage with Mst. Zeenat Khatoon, sister of the present applicant; however, the said marriage was dissolved through a decree of Khula on 24.01.2024, and thereafter there remained no nexus between the deceased and the present applicant. He further submitted that the deceased Shafiq had attacked the police party, resulting in registration of FIR No.125/2025. According to learned counsel, although the present applicant was not nominated in FIR No.126/2025, subsequently, pursuant to the order of the learned Justice of Peace, the version of Asghar, cousin of the deceased Shafiq, was recorded wherein the present applicant was implicated. It is contended that such version was fabricated owing to the previous grudge arising out of dissolution of the marriage and that the applicant had no connection whatsoever with the alleged occurrence. Learned counsel, therefore, prayed for setting aside the impugned order.

4. Conversely, learned counsel for respondent No.2 submitted that the version of the complainant was duly recorded pursuant to the order of the learned Justice of Peace and that the present applicant was nominated therein on account of his alleged involvement in the occurrence. He further submitted that the present applicant is himself a police official and had, by allegedly misusing his official position, caused registration of FIR Nos.77/2025 and 79/2025 against the complainant party. According to learned

counsel, the present applicant was one of the principal persons responsible for the death of deceased Shafiq, whereas the police had attempted to give the occurrence the colour of an encounter.

5. Learned Deputy Prosecutor General, Sindh, placed on record statements of the SHO, Police Station Ghora Ghat, and SHO, Police Station B-Section, and relied upon the investigation report. He submitted that, after collecting and examining the material available on record, the police had rightly recommended disposal of the matter under 'C' Class.

6. Heard and perused.

7. At the outset, two distinct aspects require consideration: the material sufficient to form a tentative opinion at the stage of a police report and the evidence required to establish guilt or innocence at trial. The jurisdiction exercised at the stage of consideration of a police report is limited and cannot be equated with the jurisdiction of the Trial Court, where the guilt or innocence of an accused is ultimately determined upon appreciation of evidence.

8. The plea of defence raised by an accused is ordinarily a matter for determination by the Trial Court after recording of evidence. However, this does not mean that, at the stage of consideration of a police report, the Magistrate is required to accept the prosecution version mechanically or to give overriding weight to the defence plea. The Magistrate is required to independently scrutinize the material collected during investigation and arrive at a judicial conclusion as to whether the police report deserves to be accepted. In the present case, the learned Magistrate, after examining the material available on record, did not agree with the recommendation of the Investigating Officer for disposal of the matter under 'C' Class. Such exercise, by itself, cannot be termed as an assumption of the jurisdiction of the Trial Court. The opinion of the Investigating Officer is not binding upon the Magistrate; rather, it is required to be independently considered and subjected to judicial

scrutiny. In this regard, reliance may be placed upon **Waqas-ur-Rehman alias Moon v. The State, 2021 SCMR 1899.**

9. Likewise, in **Hayatullah and another v. Muhammad Khan and others, 2011 SCMR 1354**, the Honourable Supreme Court has held, in substance, that determination of the guilt or innocence of an accused is not within the domain of the Investigating Officer and that such determination squarely falls within the jurisdiction of the Trial Court.

10. Thus, while the ultimate determination of guilt or innocence is unquestionably the domain of the Trial Court, the learned Magistrate, while considering the police report, is not bound to accept the Investigating Officer's opinion as conclusive.

11. In the present case, without expressing any opinion on the merits of the allegations or recording any finding touching upon the ultimate guilt or innocence of the applicant, this Court finds no illegality or material irregularity in the impugned order warranting interference at this stage. Any further observation on the merits may prejudice either side at the appropriate stage of proceedings.

12. Consequently, no ground for interference with the impugned order is made out at this stage. Accordingly, the instant Criminal Miscellaneous Application is hereby dismissed.

JUDGE